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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition for Declaratory Ruling )  
that Microwave System Operated ) RM-8657  
by the South Florida Water )  
Water Management District is a Public )  
Safety Facility )

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OPPOSITION OF UTAM, INC.

UTAM, Inc. hereby files its opposition to the South Florida Water Management District's Petition for a Declaratory Ruling that its microwave system is a public safety facility within the meaning of the PCS transition rules.<sup>1</sup> As the frequency coordinator for the unlicensed PCS spectrum, UTAM is responsible for relocating the microwave links currently operating in the unlicensed spectrum and managing the deployment of unlicensed PCS devices and systems to the public.<sup>2</sup> The FCC has established transition rules designed to allow UTAM to clear the unlicensed spectrum while protecting microwave incumbents from disruption to their services and allowing additional relocation time to a narrow class of public safety facilities. UTAM believes that the FCC properly has limited the public safety category so as to protect vital

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<sup>1</sup> Petition for Declaratory Ruling of the South Florida Water Management District, RM-8657 (filed May 15, 1995)[hereinafter "South Florida Water Management District Petition"].

<sup>2</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, 77 Rad. Reg. 2d 1101 (1995)(Fourth Memorandum Opinion and Order).

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communications without delaying the deployment of PCS and that the Petitioner does not meet the requirements for inclusion in that class. Therefore, UTAM urges the Commission to deny the Petition and maintain the current public safety facility classification requirements.

## **I. INTRODUCTION**

UTAM has been designated by the Commission as the frequency coordinator for the unlicensed PCS spectrum. Because any manufacturer can deploy its products in this band, a mechanism was needed to collect the funds necessary to relocate the microwave incumbents in the band from the manufacturers benefitting from the sale of their products. UTAM's plan for financing and managing this process was approved by the Commission, and UTAM is prepared to begin the deployment of coordinatable unlicensed products.<sup>3</sup>

To raise the funds necessary to relocate incumbents, UTAM will collect clearing fees from manufacturers for each coordinatable product deployed. As UTAM clears the spectrum, more coordinatable devices can be deployed, which will in turn raise additional revenue toward ultimate clearing of the band. Thus, any factor which slows the relocation process will delay the full deployment of unlicensed devices and systems, including particularly nomadic products.

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<sup>3</sup> Coordinatable devices and systems must meet the requirements outlined in 47 C.F.R. § 15.307 which will ensure such devices and systems operate without causing interference to incumbents.

The Petitioner has requested a declaratory ruling that its microwave systems, which operate in both the licensed and unlicensed bands, be reclassified as public safety systems and, thereby, secure a longer transition period for relocation. However, the nature of the Management District's communications, though important, do not meet the FCC's strict definition of public safety services. Expansion of the public safety category as suggested by the Management District will increase the relocation time for the reclassified links, which will delay the deployment of coordinatable devices, the collection of clearing fee revenue, and the clearing of the band.

## **II. THE FCC HAS ESTABLISHED A TRANSITION PLAN WHICH ESTABLISHES SPECIAL GROUND RULES FOR A NARROW CLASS OF PUBLIC SAFETY LICENSEES**

Both licensed and unlicensed PCS require the relocation of the microwave incumbents currently located in the emerging technologies band. However, to protect these incumbents from disruption to their services, the FCC developed transition rules which ensure that PCS providers can relocate incumbents by providing them with comparable facilities. Those rules require the provision of full cost compensation and comparable alternative facilities to relocated incumbents.

A microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless transition to the new facilities. Moreover, if, within a period of one year after relocation, the relocated microwave licensee demonstrates that the new

facilities are not comparable to the original facilities, the PCS licensee or device manufacturer must remedy the defects or pay to relocate the microwave licensee back to its former (or other equivalent) 2 GHz band frequencies.<sup>4</sup> These extensive requirements fully protect licensees from disruption to their communications and from economic hardship resulting from the relocation.

Most microwave incumbents relocated by PCS licensees face a two-year voluntary negotiation period, followed by a one-year mandatory negotiation period, for determining relocation details. However, because of the unique circumstances of unlicensed PCS and the importance of rapid clearing of the unlicensed spectrum, links relocated by UTAM are covered by a one-year mandatory negotiation period only.<sup>5</sup> This shorter time period is critical to ensuring that UTAM is able to generate sufficient revenue to continue relocation activities.

Although this transition scheme is sufficient to protect all incumbents in the PCS spectrum, the FCC also has provided certain public safety licensees an extended three-year voluntary negotiation period followed by a two-year mandatory negotiation period as an additional cushion to ensure a seamless relocation.<sup>6</sup> Such microwave incumbents

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<sup>4</sup> Id.

<sup>5</sup> Redevelopment of Spectrum, Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589, 6595, 9598 ¶¶ 15, 23 (1993).

<sup>6</sup> Redevelopment of Spectrum, Second Memorandum Opinion and Order, 9 FCC Rcd 7797, 7802 ¶ 33 (1994).

enjoy special benefits based upon the essential emergency police, fire, and safety functions they perform for the public.

### **III. THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT'S COMMUNICATIONS SYSTEMS DO NOT MEET THE COMMISSION'S PUBLIC SAFETY DEFINITION**

The FCC has restricted the availability of an expanded negotiation period to: (1) those licensees providing police, fire, and special emergency medical service as long as the majority of communications carried on those facilities are used for police, fire, or emergency medical services operations involving the safety of life and property, and (2) other public safety licensees who demonstrate that "the majority of the communications carried on those facilities are used for operations involving safety of life and property."<sup>7</sup> Many incumbent licensees, such as public utilities, provide important services to the public and have significant communications needs, but the Commission wisely has limited the exemption to only the most essential public safety services so as not to delay unreasonably the deployment of PCS.

As detailed in its Petition, the South Florida Water Management District is responsible for flood protection, water supply, water quality protection, and environmental protection and enhancement for a large area in South Florida.<sup>8</sup> It uses a

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<sup>7</sup> Redevelopment of Spectrum, Memorandum Opinion and Order, 9 FCC Rcd 1943, 1948 ¶ 36 (1994).

<sup>8</sup> South Florida Water Management District Petition at 3.

microwave telemetry network to control a system of canals and levees to monitor the status of the water system and weather related data. Thus, by its own admission, the Management District's communications are used largely for monitoring and control rather than summoning immediate aid to protect life and property. Although of great consequence, these communications are more similar to those of a public utility, which were excluded from the Commission's definition, than to those of a police, fire, or emergency medical services entity.<sup>9</sup> As the Commission stated, "we agree that the facilities and services that should be afforded such special treatment should be narrowly defined and limited to only those facilities directly used for police, fire, or emergency medical services operations involving safety of life and property."<sup>10</sup>

#### **IV. ENLARGING THE DEFINITION OF PUBLIC SAFETY WOULD BE UNWARRANTED AND HIGHLY DETRIMENTAL TO THE DEPLOYMENT OF IMPORTANT PCS SERVICES**

In its decisions, the FCC has distinguished carefully between those public safety licensees directly protecting the safety of life and property and other communications, however important or useful, that lack such a degree of immediacy. This distinction is necessary to ensure that only the most vital systems are granted lengthened negotiation periods and should not be revisited here. Enlargement of the public safety classification simply would increase the relocation time for UTAM and other PCS

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<sup>9</sup> Memorandum Opinion and Order, 9 FCC Rcd at 1949-50 ¶¶ 46-52.

<sup>10</sup> Id. at 1950 ¶ 51.

providers and slow the full deployment of PCS without providing any additional public benefits.

The relocation of incumbents classified as public safety could take up to seven years. Each such incumbent is entitled to a three-year voluntary negotiation period and a two-year mandatory negotiation period. If agreement is reached with UTAM or a PCS licensee, it could then take up to one year to relocate the link after which the incumbent is entitled to a one-year testing period. This delay could have severe consequences for both the PCS licensees and UTAM. Even one remaining link in an important location which cannot be relocated swiftly could preclude the deployment of a licensed system in an entire area and significantly impact UTAM's ability to raise the revenues needed to clear the unlicensed band. The public safety category should be limited to the facilities carrying the most vital communications to minimize the time necessary for deployment of PCS.

## V. CONCLUSION

The Commission has expended significant resources in developing a transition plan to expedite the deployment of PCS products and services to the public while ensuring that the interests of the microwave incumbents currently in the 2 GHz band are generously protected. These relocation requirements afford all incumbents a reasonable opportunity to negotiate and implement a problem-free relocation to a new system and give additional time for relocation to the public safety entities carrying the

most vital communications. The FCC should not delay the deployment of PCS by allowing incumbents not meeting the Commission's definition to be reclassified as public safety facilities. Therefore, UTAM respectfully requests that the Commission deny the South Florida Water Management District's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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